

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PHYLLIS JOHNSON, on behalf of herself
and all other similarly situated,

Plaintiff,

v.

OPINION AND ORDER

10-cv-426-wmc

MERITER HEALTH SERVICES EMPLOYEE
RETIREMENT PLAN, and MERITER HEALTH
SERVICES, INC.,

Defendants.

The court is in receipt of defendants' motion to strike plaintiffs' proposed findings of fact. (Dkt. #341.) On January 27, 2014, plaintiffs filed 170 pages of proposed findings of fact in conjunction with their motion for partial summary judgment. (Dkt. #335.) Defendants raise several issues with respect to plaintiff's proposed findings of facts, most of which have merit. The court, however, will neither strike plaintiffs' proposed findings of facts wholesale nor summarily deny their motion for partial summary judgment. As detailed below, the court will instead (1) order plaintiffs to file revised proposed findings of facts by Tuesday, February 4, 2014, consistent with this court's procedure on motions for summary judgment; and (2) extend defendants' response deadline nine days to February 27, 2014, making plaintiffs' reply due March 10, 2014.

Defendants raise four basic challenges to the form of plaintiffs' proposed findings. *First*, defendants contend that "[t]he majority of plaintiffs' numbered paragraphs contain multiple sentences with multiple factual propositions." (Defs.' Mot. (dkt. #341) ¶ 7.) The court's cursory review of plaintiffs' submission bears out defendants' complaint.

(*See, e.g.*, Pl.'s PFOFs (dkt. #335) ¶ 334 (containing at least four separate factual propositions); ¶ 191 (containing at least three separate factual propositions).) Accordingly, the court will require plaintiffs to file revised proposed findings of facts addressing this blatant violation of this court's standing order. So as to not disrupt the citations to plaintiffs' proposed findings of facts in their opening brief, the court will, therefore, require plaintiffs to create subparagraphs for *each* proposed factual proposition. In other words, plaintiffs should not add or delete from the number of paragraphs, but rather should break down any paragraphs that contain more than one factual proposition into subparagraphs, *e.g.* ¶¶ 334a, 334b, 334c, etc.

Second, defendants challenge plaintiffs' use of footnotes in their proposed findings of fact, including footnotes which in turn contain multiple factual propositions. (Defs.' Mot. (dkt. #341) ¶ 10.) Plaintiffs' use of footnotes exacerbates an already complicated set of proposed findings, several (if not the majority) of which appear to contain multiple factual propositions. As a sanction for abusing this court's order on summary judgment motions, the court will strike all footnotes from the proposed filings of facts. Accordingly, plaintiff should remove all footnotes in filing their revised finding of facts.

Third, defendants argue that certain proposed findings contain (a) legal conclusions and/or (b) opinions of counsel. (Defs.' Mot. (dkt. #341) ¶¶ 14-15.) To the extent this is so, defendants are free simply to object to those paragraphs or subparagraphs as either containing a legal conclusion or opinion of counsel and need not respond further.

Fourth, defendants contend that certain paragraphs set forth “hypothetical or counterfactual propositions rather than any underlying material facts.” (Defs.’ Mot. (dkt. #341) ¶ 16.) To the extent appropriate, defendants are also free to simply object to any *incomplete or irrelevant* hypotheticals as such. The court cautions, however, that defendants object generally at their own peril and may be well served to set forth the incomplete or missing factors and/or why the hypothetical is irrelevant to the issues before this court.

ORDER

IT IS ORDERED that:

- 1) defendants Meriter Health Services Employee Retirement Plan and Meriter Health Services, Inc.’s motion to strike plaintiffs’ proposed findings of facts (dkt. #341) is GRANTED IN PART AND DENIED IN PART;
- 2) plaintiffs’ proposed findings of fact (dkt. #341) are STRICKEN;
- 3) plaintiffs shall file revised findings in strict compliance with this opinion and order by the end of day February 4, 2014, without otherwise editing, altering, adding or subtracting from their original proposed filings; and
- 4) defendants’ response deadline to plaintiffs’ motion for partial summary judgment is extended to February 27, 2014, making plaintiffs’ reply now due March 10, 2014.

Entered this 30th day of January, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge